IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 3880 OF 2003

DATE OF DECISION: February 26, 2007

Parties Name

Gurbachan Singh and another

..PETITIONERS

VERSUS

Superintending Canal Officer and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE VINOD K. SHARMA

PRESENT: Mr.Sarwan Singh, Sr. Adv., with Mr. A.S.Parmar, Advocate, for the petitioners.

Mr. S.S.Randhawa, AAG, Punjab;

JASBIR SINGH, J. (oral)

Order.

This writ petition has been filed with a prayer that the order, passed by the Superintending Canal Officer, dated December 26, 2002 (Annexure P-8), vide which he reversed the order passed by the Divisional Canal Officer allowing restoration of the water course under Section 30 FF of the Northern India Canal and Drainage Act, 1873, be quashed.

It is apparent from the records that the Divisional Canal Officer vide order dated November 20, 2002, gave a specific finding that the existence of the demolished water course, as alleged by the petitioners, was established on record. To say so, reliance was placed upon statements made by the Gram Panchayat, co-sharers of the water course concerned and the report made by the lower revenue staff. Respondents No. 3 to 9 went in appeal, which was allowed vide order under challenge by giving a categoric finding that the petitioner has failed to prove on record that his land was

being irrigated through canal water at any time. It was further said that the petitioners had been irrigating their land through tubewells. By saying so, it was observed that existence of the alleged demolished water course was not proved on record. Appeal was accepted and order, passed by the Divisional Canal Officer was reversed.

In this writ petition, the petitioners have placed on record Annexures P-9 and P-10 to show that land of the petitioners was being irrigated by canal water through a water course. It is apparent from the records that these documents were not taken note of when order Annexure P-8 was passed. It has been stated by counsel for the respondents that these documents are not genuine. Be that as it may, it is not possible for us to look into this aspect of the matter. With a view to give justice to both the parties, we deem it appropriate to set aside order Annexure P-8 and remit the matter to the Superintending Canal Officer to decide the appeal, filed by the respondents after taking note of documents Annexures P-9 and P-10 and other evidence on record. Parties are directed to appear before that Officer on March 20, 2007. The writ petition stands disposed of accordingly.

(Jasbir Singh)
Judge

(Vinod K. Sharma)
Judge

February 26, 2007.
DKC